

## Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	85219379
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 113
<b>MARK SECTION (no change)</b>	
<b>ARGUMENT(S)</b>	
<p>The Applicant timely filed a response to the initial Office Action on July 7, 2014 asserting that the specimens previously submitted should be considered acceptable for supporting the Statement of Use Declaration. The only issue pertained to the specimen being considered as being unacceptable. Applicant followed the July 7, 2014 filing with a Post-Notice of Allowance Amendment filing on July 21, 2014 wherein Applicant raised additional arguments and submitted a substitute specimen along with a supporting declaration. In her Final Office Action dated August 14, 2014, the Trademark Attorney Examiner indicated that she has not considered Applicant's submissions and arguments raised in Applicant's July 21, 2014 filing, as such submissions and arguments were not filed within six months from the date of the earlier Office Action. Applicant therefore files a timely Request for Reconsideration of the Final Office Action and submits herewith a substitute specimen along with a supporting declaration indicating that the substitute specimen herein submitted was in use in commerce prior to the expiration of the time allowed applicant by the "insurance" extension request for filing a Statement of Use, which is July 21, 2014. Based upon the foregoing it is respectfully requested that the application proceed with the acceptance of the Statement of Use Declaration and the issuance of the registration certificate.</p>	
<b>EVIDENCE SECTION</b>	
<b>EVIDENCE FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">evi_642333131-20150217181706939217_.1599_001.pdf</a>
<b>CONVERTED PDF FILE(S) (3 pages)</b>	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\852\193\85219379\xml19\RFR0002.JPG</a>
	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\852\193\85219379\xml19\RFR0003.JPG</a>
	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\852\193\85219379\xml19\RFR0004.JPG</a>
<b>DESCRIPTION OF EVIDENCE FILE</b>	signed declaration and substitute specimen
<b>GOODS AND/OR SERVICES SECTION (current)</b>	

INTERNATIONAL CLASS	005
<b>DESCRIPTION</b>	
Medicated lip care preparations, medicated topical creams, lotions, gels, balms, and ointments for human use for lip and skin dryness, cold sores, and for lip and skin care	
FIRST USE ANYWHERE DATE	At least as early as 08/00/2013
FIRST USE IN COMMERCE DATE	At least as early as 08/00/2013
FILING BASIS	Section 1(b)
<b>GOODS AND/OR SERVICES SECTION (proposed)</b>	
INTERNATIONAL CLASS	005
<b>DESCRIPTION</b>	
Medicated lip care preparations, medicated topical creams, lotions, gels, balms, and ointments for human use for lip and skin dryness, cold sores, and for lip and skin care	
FIRST USE ANYWHERE DATE	At least as early as 07/14/2014
FIRST USE IN COMMERCE DATE	At least as early as 07/14/2014
STATEMENT TYPE	"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application" [for an application based on Section 1(a), Use in Commerce] OR "The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use" [for an application based on Section 1(b) Intent-to-Use].
<b>SPECIMEN FILE NAME(S)</b>	
ORIGINAL PDF FILE	<a href="#">SPU0-642333131-20150217181706939217_.1598_001.pdf</a>
CONVERTED PDF FILE(S) (1 page)	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\852\193\85219379\xml19\RFR0005.JPG</a>
SPECIMEN DESCRIPTION	point of purchase materials showing the applied-for mark in close connection and proximity with the goods at point of sale
<b>SIGNATURE SECTION</b>	
DECLARATION SIGNATURE	The filing Attorney has elected not to submit the signed declaration, believing no supporting declaration is required under the <i>Trademark Rules of Practice</i> .
RESPONSE SIGNATURE	/bsehrlich/
SIGNATORY'S NAME	

<b>SIGNATORY'S NAME</b>	Burton S. Ehrlich
<b>SIGNATORY'S POSITION</b>	Attorney of record, Illinois bar member
<b>SIGNATORY'S PHONE NUMBER</b>	3124271300
<b>DATE SIGNED</b>	02/17/2015
<b>AUTHORIZED SIGNATORY</b>	YES
<b>CONCURRENT APPEAL NOTICE FILED</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Tue Feb 17 18:44:12 EST 2015
<b>TEAS STAMP</b>	USPTO/RFR-64.233.3.131-20 150217184412301613-852193 79-530524080d9e06016fc283 aa83e177da1e360163beadde1 c29d33e944eceb791b-N/A-N/ A-20150217181706939217

## Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **85219379** has been amended as follows:

### ARGUMENT(S)

**In response to the substantive refusal(s), please note the following:**

The Applicant timely filed a response to the initial Office Action on July 7, 2014 asserting that the specimens previously submitted should be considered acceptable for supporting the Statement of Use Declaration. The only issue pertained to the specimen being considered as being unacceptable. Applicant followed the July 7, 2014 filing with a Post-Notice of Allowance Amendment filing on July 21, 2014 wherein Applicant raised additional arguments and submitted a substitute specimen along with a supporting declaration. In her Final Office Action dated August 14, 2014, the Trademark Attorney Examiner indicated that she has not considered Applicant's submissions and arguments raised in Applicant's July 21, 2014 filing, as such submissions and arguments were not filed within six months from the date of the earlier Office Action. Applicant therefore files a timely Request for Reconsideration of the Final Office Action and submits herewith a substitute specimen along with a supporting declaration indicating that the substitute specimen herein submitted was in use in commerce prior to the expiration of

the time allowed applicant by the "insurance" extension request for filing a Statement of Use, which is July 21, 2014. Based upon the foregoing it is respectfully requested that the application proceed with the acceptance of the Statement of Use Declaration and the issuance of the registration certificate.

## **EVIDENCE**

Evidence in the nature of signed declaration and substitute specimen has been attached.

### **Original PDF file:**

[evi\\_642333131-20150217181706939217\\_.1599\\_001.pdf](#)

### **Converted PDF file(s) ( 3 pages)**

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

## **CLASSIFICATION AND LISTING OF GOODS/SERVICES**

### **Applicant proposes to amend the following class of goods/services in the application:**

**Current:** Class 005 for Medicated lip care preparations, medicated topical creams, lotions, gels, balms, and ointments for human use for lip and skin dryness, cold sores, and for lip and skin care

Original Filing Basis:

**Filing Basis: Section 1(b), Intent to Use:** The applicant has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

In International Class 005, the mark was first used at least as early as 08/00/2013 and first used in commerce at least as early as 08/00/2013 .

**Proposed:** Class 005 for Medicated lip care preparations, medicated topical creams, lotions, gels, balms, and ointments for human use for lip and skin dryness, cold sores, and for lip and skin care

Deleted Filing Basis: 1(b)

In International Class 005, the mark was first used at least as early as 07/14/2014 . and first used in commerce at least as early as 07/14/2014 .

Applicant hereby submits one(or more) specimen(s) for Class 005 . The specimen(s) submitted consists of point of purchase materials showing the applied-for mark in close connection and proximity with the goods at point of sale .

" **The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application**"*[for an application based on Section 1(a), Use in Commerce]* OR "**The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use**" *[for an application based on Section 1(b) Intent-to-Use]* .

### **Original PDF file:**

[SPU0-642333131-20150217181706939217\\_.1598\\_001.pdf](#)

### **Converted PDF file(s) ( 1 page)**

[Specimen File1](#)

## **SIGNATURE(S)**

### **Declaration Signature**

I hereby elect to bypass the submission of a signed declaration, because I believe a declaration is not required by the rules of practice. I understand that the examining attorney could still, upon later review,

require a signed declaration.

**Request for Reconsideration Signature**

Signature: /bsehrlich/ Date: 02/17/2015

Signatory's Name: Burton S. Ehrlich

Signatory's Position: Attorney of record, Illinois bar member

Signatory's Phone Number: 3124271300

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 85219379

Internet Transmission Date: Tue Feb 17 18:44:12 EST 2015

TEAS Stamp: USPTO/RFR-64.233.3.131-20150217184412301

613-85219379-530524080d9e06016fc283aa83e

177da1e360163beadde1c29d33e944eceb791b-N

/A-N/A-20150217181706939217

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	)	Examiner:
	)	Kim Teresa Moninghoff
BLISTEX INC.	)	
	)	Law Office: 113
Serial No. 85/219,379	)	
	)	
Filed: January 17, 2011	)	
	)	
For: SELECTS	)	

**DECLARATION**

The undersigned being duly sworn on oath, states as follows:

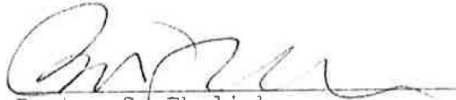
That the substitute specimen herein submitted was in use in commerce prior to the expiration of the time allowed applicant by the "insurance" extension request for filing a statement of use declaration which is July 21, 2014. The mark is shown on point of purchase materials in close connection with the goods at point of sale. Applicant further herein states the first use date and first use date in interstate commerce of the submitted substitute specimen was at least as early as July 14, 2014 and is currently in use.

**DECLARATION**

The undersigned declares that he is properly authorized to execute this Declaration on behalf of said corporation; that all statements made herein of his own knowledge are true; and that all statements made on information and belief are believed to be true; and further that these statements were made with the

knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

7-21-14  
Date

  
Burton S. Ehrlich  
Attorney with authority for  
signing Declaration

Burton S. Ehrlich  
Ladas & Parry  
224 S. Michigan Avenue  
Suite 1600  
Chicago, Illinois 60604  
(312) 427-1300

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product details | ingredients | reviews | media

3 Creamy Blends with Natural Fruit Extracts, Flavors & Vitamins

Melon Medley<sup>®</sup>, Berry Explosion<sup>®</sup>, Triple Tropical<sup>®</sup>

Lip Protection/Sunscreen with SPF 15

3 Sticks - 10 oz (2.83g) each

**Lip Cravings<sup>™</sup>:** Fruit Smoothies protect and hydrate lips with natural fruit extracts and vitamins. Their unique flavors in creamy blends indulge your lips like no other lip balm.

**Super Smooth Lip<sup>®</sup>:** Fruit Smoothies are packed with moisturizers and fortified with natural fruit extracts plus vitamins B5 and C. Fruit Smoothies are both creamy and juicy when applied. They have a special feature that feels ultra-smooth and leaves your lips feeling that way.

**Salt Lick<sup>™</sup>:** Fruit Smoothies explode with fresh-tasting fruit flavors. Melon Medley, Berry Explosion and Triple Tropical all feature carefully balanced flavor combinations in 3 different flavor profiles. Plus, this assortment lets you choose which flavors you want when you want them.

**Sun Alert:** Limiting sun exposure, wearing protective clothing, and using sunscreen may reduce the risks of skin aging, skin cancer and other harmful effects of the sun.

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indications

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Helps prevent sunburn.

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Vegan, Blistex, Blistex



**Blistex Smooth Lip Balm**  
SPF 15, Protection, Fruit  
Others: On Smooth Lip, the Perfect  
Vegan, Blistex, Blistex



**Blistex Smooth Lip Balm**  
SPF 15, Protection, Fruit  
Others: On Smooth Lip, the Perfect  
Vegan, Blistex, Blistex

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Blistex, Blistex skin aging care

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